

Auctioneers

How Do Wisconsin Sales and Use Taxes Affect Your Operations?

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I. INTRODUCTION

This publication explains how the 5% Wisconsin state sales and use taxes apply to sales made at auctions.

Note: Certain transactions which are subject to the 5% state tax may also be subject to (a) 0.5% county sales and use tax, (b) 0.1% stadium sales and use tax, and (c) 0.25% local exposition tax on food and beverages. Additional information about these taxes is contained in the following:

- (a) County and stadium taxes: Publication 201, *Wisconsin State and County Sales and Use Tax Information*, pages 34-39.
- (b) Local exposition tax on food and beverages: Publication 410, *Local Exposition Taxes*. (Sales of food and beverages which are subject to the 5% Wisconsin state sales tax may also be subject to the 0.25% food and beverage local exposition tax if the sales take place in a municipality located wholly or partially in Milwaukee County.)

CAUTION

The information in this publication reflects interpretations by the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature as of January 1, 2000. Laws enacted after this date, new administrative rules, and court decisions may change the interpretations in this publication. Also note that lists of taxable or exempt items in this publication are not all-inclusive. They merely set forth common examples.

II. DEFINITIONS

As used in this publication, the terms below have the following definitions:

A. Auction

A sale transaction conducted by means of oral or written exchanges between an auctioneer and prospective purchasers of goods, services, or real estate that consist of a series of invitations made by the auctioneer to the prospective purchasers for offers for the purchase of goods, services, or real estate and that culminate in the acceptance by the

auctioneer of the highest or most favorable offer made by one of the prospective purchasers.

B. Auctioneer

An individual who engages in, or who by advertising or otherwise holds himself or herself out as being available to engage in, the calling for and the recognition and acceptance of offers for the purchase of goods, services, or real estate at an auction.

III. WHO IS SUBJECT TO SALES TAX AT AUCTIONS?

A. Who Is Subject to Sales Tax?

An auctioneer making sales of tangible personal property or taxable services at auctions is liable for the collection, reporting, and payment of sales tax on taxable sales. (See Part V on pages 3-8 for an explanation of taxable and exempt sales. For a listing of taxable services, see Publication 201, *Wisconsin State and County Sales and Use Tax Information*, pages 13-17.)

B. Who Must Obtain a Seller's Permit?

An auctioneer making taxable sales is required to obtain a seller's permit from the Wisconsin Department of Revenue.

If an auctioneer makes only exempt sales, it is not required to hold a seller's permit or collect sales tax.

C. How to Obtain a Seller's Permit

1. Type of permit needed

The type of permit needed by an auctioneer depends on whether the auctioneer makes taxable sales at a fixed sales location or at various locations.

Sales at a fixed sales location: If an auctioneer makes taxable sales at a fixed sales location, the auctioneer must obtain a seller's permit for that location.

Sales at various locations: If an auctioneer makes taxable sales at various locations, the auctioneer must hold a mobile seller's permit.

Example: Auctioneer A has an office at which it conducts its business operations, but it does not hold any auctions at its office. Auctioneer A holds its auctions at the residence, farm, or business location of the owner of the property, and at a rented hall. Some of Auctioneer A's sales are subject to sales tax, and some of its sales qualify for exemption from sales tax.

Auctioneer A must hold a mobile seller's permit because it makes taxable auction sales at various locations.

(Note: If an auctioneer makes taxable sales at a fixed sales location and at various other locations, the auctioneer is required to hold both a seller's permit for sales at the fixed sales location and a mobile seller's permit for sales at the various other locations.)

2. Application for seller's permit

Application for a seller's permit or mobile seller's permit is made on Form A-101, "Application for Permit/Certificate." This form may be obtained from any Department of Revenue office. See Part III.C.3, below, for information regarding fees.

3. Business tax registration

Auctioneers applying on or after January 1, 1996, for certain permits or certificates issued by the Department of Revenue, including seller's permits and/or mobile seller's permits, may be required to pay a Business Tax Registration (BTR) fee of \$20. The \$20 BTR fee applies only to the first permit or certificate a person applies for on or after January 1, 1996. Subsequent registrations for other permits or certificates do not require additional BTR fees.

An auctioneer does not have to pay the \$20 BTR fee if (1) it held any active permit or certificate on December 31, 1995, that is covered by the BTR provisions, or (2) when applying

for a seller's permit or mobile seller's permit, it held any active permit or certificate that is covered by the BTR provisions.

IV. COMPUTING THE SALES TAX

A. Sales Tax Imposed on Gross Receipts

Sales tax is imposed on an auctioneer's taxable gross receipts. "Gross receipts" is the total amount of the sales or rental price, whether received in money or something other than money.

Taxable gross receipts include:

1. Amounts received from buyers from sales of tangible personal property or taxable services.

Example: Auctioneer B sells business inventory for \$20,000 at an auction. Auctioneer B retains a commission of \$2,000 and remits the remaining \$18,000 to the owner of the business inventory. Auctioneer B's gross receipts subject to tax are \$20,000.

2. Charges made by the auctioneer for delivery of the property.

Example: Auctioneer C sells business equipment for \$950 at an auction and also charges \$50 for delivering the equipment to the customer. Auctioneer C's gross receipts subject to tax are \$1,000 (\$950 + \$50). Note: If the item sold is not taxable, then the delivery charge is also not taxable.

3. Buyer's fees charged on taxable sales.

Example: Auctioneer D charges all buyers a 1% fee, which is added to the price of the taxable property sold. Auctioneer D sells business assets for \$10,000 at an auction. Auctioneer D also receives from the buyers a 1% fee of \$100. Auctioneer D's gross receipts subject to tax are \$10,100.

Taxable gross receipts do not include:

1. Charges for customer identification cards.

Note: Although an auctioneer's charges for customer identification cards are not subject to sales tax, an auctioneer must pay sales or use tax on its purchases of customer identification cards.

Example: Auctioneer E charges a \$1 fee to each customer for an identification card. The \$1 fee is charged whether or not the buyer makes any purchases. Auctioneer E's receipts from the \$1 fee are not included in its taxable gross receipts.

2. Charges for interest, financing, or insurance if such charges are separately stated on the invoice given to the buyer.

B. Tax Rate

- Wisconsin state sales and use tax rate: 5%
- County sales and use tax rate (effective in those counties which have adopted the county tax): 0.5%
- Stadium sales and use tax rate (effective in Milwaukee, Ozaukee, Racine, Washington, and Waukesha Counties): 0.1%
- Local exposition tax rate on food and beverages (effective in municipalities located wholly or partially in Milwaukee County): 0.25%

V. TAXABLE AND EXEMPT AUCTION SALES

A. Taxable Auction Sales

An auctioneer's sales of tangible personal property and taxable services are subject to the 5% sales tax, and the auctioneer is liable for the tax on such sales, unless the sales meet one of the exemptions described in Part V.B, on pages 3-8.

Note: If the contract between an auctioneer and the owner of the property is for calling the auction

only, and the owner of the property clerks the auction and has primary responsibility for sales proceeds, down payments, earnest money deposits, and other trust funds; the owner of the property (not the auctioneer) is liable for sales tax on sales made at the auction.

Example: A financial institution, who repossessed business equipment from a debtor, contracts with Auctioneer B to call an auction to sell the business equipment. Auctioneer B is engaged in the business of making sales at auctions. The contract between the financial institution and Auctioneer B is for calling the auction only. The financial institution clerks the auction and has primary responsibility for sales proceeds, down payments, earnest money deposits, and other trust funds. The financial institution handles customer identification, accepts payment from customers, and pays a fee to the auctioneer for calling the auction.

The financial institution is liable for sales tax on the auction sales of the business equipment.

Note: Information is included in Part VI, on pages 8-9, relating to sales by nonprofit organizations; in Part VII.A, on pages 9-10, relating to sales of motor vehicles, boats, aircraft, snowmobiles, all-terrain vehicles, mobile homes, trailers, and semi-trailers; and in Part VII.B, on page 10, relating to sales outside Wisconsin.

B. Exempt Auction Sales

Auction sales exempt from the 5% sales and use tax include:

1. Sales for which the buyer claims exemption, and
2. Sales of personal farm property or personal household goods.

Note: Auction sales of real estate are not subject to sales and use tax.

Additional information about these two exempt auction sales is provided below.

1. Sales for which the buyer claims exemption

Four common ways that a buyer claims exemption from Wisconsin sales and use taxes are as follows:

a. Buyer furnishes auctioneer a resale certificate.

If a resale certificate is given to the auctioneer and the auctioneer accepts the certificate in “good faith,” the sale is exempt. For resale certificates, as well as the exemption certificates in b. and c. below, the following conditions must be met in order for “good faith” to be established:

- The certificate must contain no statement or entry which the auctioneer knows, or has reason to believe, is false or misleading.
- The certificate must contain all the necessary information.

Example: Auctioneer E sells store shelving at an auction. (The store shelving is business equipment and does not qualify for exemption as an auction sale of personal farm property or personal household goods.)

The buyer provides Auctioneer E with a properly completed resale certificate which Auctioneer E accepts in good faith. Auctioneer E’s sale of this store shelving is exempt from sales tax.

b. Buyer furnishes auctioneer an exemption certificate stating that buyer’s use will be exempt.

Example 1 — Manufacturer’s Exemption Certificate: Auctioneer F sells a machine to a manufacturer who will use the machine exclusively and directly in manufacturing.

The manufacturer provides Auctioneer F with a properly completed manufacturer’s exemption certificate. Auctioneer F accepts

the exemption certificate in good faith. Auctioneer F’s sale of the machine is exempt from sales tax.

Example 2 — Farmer’s Exemption Certificate: Auctioneer G sells a tractor at an auction. Auctioneer G is the owner of the tractor. (The tractor is business inventory of Auctioneer G and the sale does not qualify for exemption as a sale of personal farm property or personal household goods.)

The buyer provides Auctioneer G with a properly completed farmer’s exemption certificate which Auctioneer G accepts in good faith. Auctioneer G’s sale of the tractor is exempt from sales tax.

c. Buyer organization is exempt (e.g., Wisconsin public schools and municipalities, federal government, nonprofit organizations holding a Certificate of Exempt Status) and furnishes required documentation to auctioneer.

d. Buyer holds a direct pay permit and furnishes required documentation to auctioneer.

Note: See Part VIII, on pages 11-12, for information on the records an auctioneer is required to keep to support exempt sales.

2. Auction sales of personal farm property or personal household goods-for sales on January 1, 2000 and after

For an auction sale of personal farm property or personal household goods to be exempt from sales and use tax, all three conditions listed below must be met. The auctioneer is not required to obtain an exemption certificate from the buyer for a sale which meets all three conditions.

Condition 1: Sale must be by auction.

Condition 2: The auction must be held at a location where the auctioneer holds five or fewer auctions during the calendar year.

Condition 3: The property sold must be personal farm property or personal household goods of the owner.

Additional information about each of the three conditions is provided below.

Condition 1: Sale must be by auction.

An auction is a sale transaction conducted by means of oral or written exchanges between an auctioneer and prospective purchasers of goods, services or real estate that consist of a series of invitations made by the auctioneer to the prospective purchasers for offers for the purchase of goods, services or real estate and that culminate in the acceptance by the auctioneer of the highest or most favorable offer made by one of the prospective purchasers. (This is the same definition as in Part II.A, on page 1.)

Condition 2: The auction must be held at a location where the auctioneer holds five or fewer auctions during the calendar year. For indoor locations, “location” means a building, except that in the case of a shopping center or a shopping mall, “location” means a store. (**Note:** An auctioneer may have more than one location at which its auctions do not meet Condition 2.)

Example 1: Auctioneer H holds an auction at the home of Person I in December, 2000. This is the only auction held at Person I’s home in 2000. The auction meets Condition 2.

Example 2: During 2000, Auctioneer J holds eight auctions at Company ABC’s warehouse and five auctions at Store XYZ. The eight auctions held by Auctioneer J at Company ABC’s warehouse do not meet Condition 2. The five auctions held by Auctioneer J at Store XYZ meet Condition 2.

Example 3: In 2000, Auctioneer K holds five auctions of personal household goods and one auction of business assets at a rented store. All

six auctions held by Auctioneer K at the rented store in 2000 do not meet Condition 2.

Example 4: During 2000, Auctioneer L holds ten auctions in a rented hall and six auctions in a park shelter. All ten of Auctioneer L’s auctions held in the rented hall and all six of Auctioneer L’s auctions held in the park shelter during 2000 do not meet Condition 2.

Example 5: Auctioneer M holds five radio auctions at one location during 2000. Auctioneer M’s radio auctions meet Condition 2.

Important Note - For auction sales of personal farm property or personal household goods before January 1, 2000:

For an auction sale of personal farm property or personal household goods to be exempt from sales and use tax, all three conditions listed below must be met. The auctioneer is not required to obtain an exemption certificate from the buyer for a sale which meets all three conditions.

Condition 1: Sale must be by auction.

Condition 2: The auction must be held at a location at which the auctioneer holds three or less auctions during the calendar year.

Condition 3: The property sold must be personal farm property or personal household goods of the owner.

Sections 77.51(9)(e) and 77.54(7)(a), Wis. Stats. (1997-98), and sec. Tax 11.50(4)(a), Wis. Adm. Code, June 1991 Register, provide that auction sales of personal farm property or personal household goods which are not held at regular intervals are exempt from sales and use tax. Based upon the law, administrative rule, and court cases, if an auctioneer holds three or less auctions at a location during the calendar year, the department considers the auctioneer's sales at that location of personal farm property or personal household goods to be exempt from sales and use tax.

If an auctioneer holds four or more auctions at one location during the calendar year, that auctioneer's sales of personal farm property and personal household goods will generally not be considered exempt from sales tax.

If an auctioneer who holds four or more auctions at a location believes it still meets the exemption, it is suggested the auctioneer write to the following address for a determination: Wisconsin Department of Revenue, Administration Technical Services, P.O. Box 8933, Madison, WI 53708-8933.

Condition 3: Property sold must be personal farm property or personal household goods of the owner.

- “Owner” is the person who owns the personal farm property or personal household goods being sold at the auction by an auctioneer.
- “Personal farm property or personal household goods” is personal property the owner “used” (see definition of “used” below) in farming or as part of the owner’s household.
- “Used” includes both the storage and the use of (1) personal farm property which was obtained for use in farming, and (2) personal household goods obtained for use as part of the household.

a. Types of personal farm property

“Personal farm property,” if used by the owner in farming, includes (this list is not all-inclusive):

- Tractors
- Plows
- Cultivators
- Cattle, horses, chickens, pigs
- Milking pumps and motors
- Milk cans
- Tools
- Lumber

Example: Person N uses a tractor in farming. The tractor is sold at an auction to a construction company which plans to use the tractor in its construction business, not in farming. The tractor is “personal farm property” because the owner, Person N, used the tractor in farming.

b. Types of personal household goods

(1) “Personal household goods,” if used as part of the owner’s household, includes (this list is not all-inclusive):

- Furniture
- Clothing
- Bicycles
- Personal collections of guns, dolls, antiques, stamps, coins, etc.
- Tools
- Sporting goods (baseball gloves, golf clubs, fishing and hunting equipment, etc.)
- Appliances (washing machines, stoves, ranges, refrigerators, freezers, vacuum cleaners, etc.)
- Pets, riding horses
- Lawn mowers, snowblowers

Example 1: Person O receives clothing as a gift. Person O stores the clothing in the closet. Because “use” includes Person O’s storage of the clothing, the clothing is “personal household goods.”

Example 2: Person P hires an auctioneer to sell at an auction, personal household goods which Person P used as part of her household. Person Q, Person R, and Person S bring to the auction personal household goods, such as furniture and tools, which were used by these persons as part of their households. All the household goods brought to the auction by Persons P, Q, R, and S are “personal household goods.”

Example 3: Person T hires an auctioneer to sell his collection of 300

guns along with furniture and other personal property which Person T used as a part of his household. Person T is not engaged in the business of selling guns. The 300 guns are “personal household goods.”

(2) “Personal household goods” does not include (a) business inventory, and (b) business assets. (This list is not all-inclusive.)

a. Business inventory

Example 1: Retailer U, who operates an appliance store, hires Auctioneer V to hold an auction to sell appliances during Retailer U’s going-out-of-business sale.

Auctioneer V’s sales of appliances for Retailer U do not qualify as sales of personal household goods and, therefore, are taxable.

Example 2: Auctioneer W attends various auctions of personal farm property and household goods. At these auctions, Auctioneer W buys items which were for sale at the auctions but did not sell to bidders. Auctioneer W then holds an auction to sell these items.

These items are business inventory of Auctioneer W, not personal farm property or personal household goods. Auctioneer W’s gross receipts from its auction sales of such items are taxable.

Example 3: Person X, who is engaged in business as an antique dealer, brings antiques to an auction. The antiques owned by Person X are not “personal

household goods” because they are business inventory of Person X. The auctioneer’s gross receipts from its auction sales of the antiques are taxable.

Example 4: Auctioneer Y holds an auction on television. The various items sold in the television auction are tangible personal property donated by local retailers. The items sold are business inventory, not “personal household goods.” Auctioneer Y’s gross receipts from its auction sales of such business inventory are taxable.

b. Business assets

Example 1: Auctioneer Z holds an auction to sell business assets of Retailer A. Retailer A has ceased operating its restaurant business. The business assets include ovens, stoves, a dishwasher, tables, chairs, and a cash register. Retailer A’s business assets are not personal household goods. Auctioneer Z’s gross receipts from its auction sales of such assets are taxable.

Example 2: Auctioneer B is hired by the estate of Person C to hold an auction to sell personal property of the estate. Before his death, Person C operated a construction business out of his home. Included among the personal property of Person C’s estate are tools and equipment which Person C had used in his construction business.

The tools and equipment used by Person C in his construction

business are not personal household goods. Auctioneer B’s gross receipts from auction sales of such tools and equipment are taxable.

VI. AUCTION SALES BY NONPROFIT ORGANIZATIONS

An auctioneer’s liability for sales tax on auction sales by nonprofit religious, charitable, educational, or civic organizations and other nonprofit organizations depends on whether the auctioneer’s services are donated.

A. Auctioneer’s Services Donated

If the auctioneer’s services are donated, the auctioneer is not liable for the collection, reporting, or payment of sales tax. An auctioneer’s services are donated if the auctioneer, for no charge, calls the auction, clerks the auction, and has primary responsibility for sales proceeds, down payments, earnest money deposits, and other trust funds. An auctioneer’s services may be donated, even though the auctioneer is reimbursed for travel expenses.

Example: Auctioneer B, for no charge, calls and clerks an primary responsibility auction for a nonprofit organization, and in addition has primary responsibility for sales proceeds, down payments, earnest money deposits, and other trust funds. The nonprofit organization only reimburses Auctioneer B for \$25 in travel expenses.

Auctioneer B is not liable for the collection, reporting, or payment of sales tax on sales at the auction for the nonprofit organization.

Caution: If the nonprofit organization holds or is required to hold a seller’s permit, the nonprofit organization may be liable for sales tax. For more information regarding sales by nonprofit organizations, see Publication 206, *Sales Tax Exemption for Nonprofit Organizations*.

B. Auctioneer’s Services Not Donated

If the auctioneer’s services are not donated, the auctioneer is responsible for the collection, report-

ing and payment of sales tax on taxable sales as explained in Parts I through V, on pages 1-8.

An auctioneer's services are not donated unless the auctioneer, for no charge, calls the auction, clerks the auction, and has primary responsibility for sales proceeds, down payments, earnest money deposits, and other trust funds.

Example: Auctioneer B calls an auction for a non-profit organization, for no charge. The nonprofit organization reimburses Auctioneer B \$25 for travel expenses and \$100 for clerking the auction. The clerks are employees of Auctioneer B, and Auctioneer B pays the clerks the \$100 received from the nonprofit organization as wages for their time spent clerking the auction.

Auctioneer B is liable for sales tax on its sales at the auction.

VII. OTHER

A. Auction Sales of Motor Vehicles, Boats, Aircraft, Snowmobiles, All-Terrain Vehicles, Mobile Homes, Trailers, and Semitrailers

1. Liability for tax

The following chart indicates who is liable for the tax on auction sales of motor vehicles, boats, etc.

Item Sold	Is Auctioneer a Dealer of Item Sold? ¹	Person Liable for Tax
Motor vehicle	Yes	Auctioneer ²
	No	Buyer ³
Boat	Yes	Auctioneer ²
	No	Buyer ³
Aircraft	Yes	Auctioneer ²
	No	Buyer ³
Snowmobile	Yes	Auctioneer ²
	No	Buyer ³
All-terrain vehicle	Yes	Auctioneer ²
	No	Buyer ³
Mobile home	Yes	Auctioneer ²
	No	Buyer ³
Trailer	Yes	Auctioneer ²
	No	Buyer ³
Semitrailer	Yes	Auctioneer ²
	No	Buyer ³

¹ For motor vehicles, aircraft, snowmobiles, all-terrain vehicles, and mobile homes, "dealer" means a person who is licensed or registered with the State of Wisconsin as a dealer. For boats, trailers, and semitrailers, an auctioneer is a "dealer" if it is engaged in business as a seller of boats, trailers, or semitrailers for profit at wholesale or retail.

² Auctioneer must collect, report and remit tax on sale, unless an exemption applies.

³ Buyer must pay tax when registering or titling the item, unless an exemption applies.

Example: Auctioneer D, who is not a licensed motor vehicle dealer, sells a motor vehicle at an auction. Auctioneer D is not liable for tax on the sale of the motor vehicle. The buyer must pay tax when registering the motor vehicle.

Note: Auction sales of motor vehicles owned by the U.S. government are subject to Wisconsin sales or use tax. If the auctioneer is a licensed motor vehicle dealer, the auctioneer is liable for sales or use tax on its sales of the

motor vehicles. If the auctioneer is not a licensed motor vehicle dealer, the buyers are liable for use tax on their purchases of the motor vehicles.

2. Motor vehicles, boats, etc., registered or titled, or required to be registered or titled, do not qualify for exemption as personal farm property or personal household goods.

Part V.B.2, on pages 4-8, describes three conditions under which sales of personal farm property or personal household goods are exempt from sales and use tax.

Auction sales of motor vehicles, aircraft, snowmobiles, all-terrain vehicles, mobile homes not exceeding 45 feet in length, trailers and semitrailers registered or titled, or required to be registered or titled in Wisconsin, do not qualify for exemption as sales of personal farm property or personal household goods.

Auction sales of boats registered or titled, or required to be registered or titled in Wisconsin or under the laws of the United States, do not qualify for exemption as sales of personal farm property or personal household goods.

Example: Auctioneer E sells a truck which was used by the owner only in its farm fields. Auctioneer E is not a licensed motor vehicle dealer. The truck was titled by the owner but not registered for use on the highway.

Auctioneer E is not liable for tax on its sale of the truck. The buyer of the truck must pay the tax when registering or titling the truck. The sale of the truck does not qualify for exemption as personal farm property or personal household goods sold at an auction because it was titled by the owner.

B. Sales Outside Wisconsin

If a sale of tangible personal property occurs outside Wisconsin, Wisconsin sales tax does not apply.

A sale occurs at the location where possession of the property sold is transferred from the seller

(auctioneer) or the seller's agent to the buyer, or the buyer's agent. A common carrier or the U.S. Postal Service is deemed by law to be an agent of the seller.

Example 1: At an auction held in La Crosse, Wisconsin, a piano is sold to a buyer from La Crescent, Minnesota. The piano is delivered to the buyer's residence in La Crescent by common carrier (a person who holds himself or herself out to the public as willing to haul property of others for hire).

The sale occurs in Minnesota, where possession of the piano is transferred by the seller's agent (common carrier) to the buyer. Because the sale occurred in Minnesota, it is not subject to Wisconsin sales tax.

Example 2: A buyer located in Mexico has an agent attend an auction of business equipment held in Green Bay, Wisconsin. The buyer's agent is not a common carrier. The buyer's agent successfully bids for a piece of equipment and takes possession of the equipment in Green Bay.

The sale occurs in Green Bay, since that is where possession is transferred to the buyer's agent, and is subject to Wisconsin sales tax.

C. Non-Auction Sales

Sales made in transactions that do not meet the definition of "auction" do not qualify for the auction exemption as sales of personal farm property or personal household goods.

Example 1: Company F sells personal household goods on behalf of the owners because of death, divorce, retirement, etc. The owners of the personal household goods are disclosed to the buyers. The owners of the personal household goods are not engaged in the full or part-time business of selling tangible personal property.

Company F appraises the personal household goods, determines selling prices, and tags the goods with the selling prices. Company F makes all necessary arrangements for the sale and conducts the sale on the owner's premises.

Although title to the personal household goods never passes to Company F, Company F has the power to transfer title to the personal household goods to the buyers. Payment for the personal household goods is made by the buyer to Company F. At the end of the sale, Company F deducts its commission and pays the balance to the owner.

Company F is liable for sales tax on its gross receipts from the sale. Company F's sales of the personal household goods are not by auction because the sales do not meet the definition of "auction" in Part II.A on page 1. Its sales of the personal household goods do not qualify for the auction exemption as sales of personal farm property or personal household goods. Company F is the seller liable for sales tax because (1) Company F had possession of the personal household goods, and (2) the owners of the personal household goods are not engaged in the full or part-time business of selling tangible personal property.

(Note: In Example 1, if the owners of the personal household goods are engaged in the full or part-time business of selling tangible personal property, the owners are liable for the payment of sales tax. If the owners fail to pay the tax, Company F may be liable for it.)

Example 2: Same as Example 1, except the owners of the personal household goods are not disclosed to the buyers.

Company F is liable for sales tax on its gross receipts from the sale. Company F's sales of personal household goods are not by auction because it tags the goods with selling prices. Company F is the seller liable for sales tax because (1) Company F had possession of the personal household goods, and (2) Company F has the power to transfer title to the personal household goods to the buyer and exercises that power.

(Note: In Example 2, Company F is the seller liable for sales tax regardless of whether the owners of the property were engaged in the full or part-time business of selling tangible personal property.)

VIII. RECORDKEEPING

A. General Records to Keep

An auctioneer required to file sales and use tax returns must keep adequate records of business transactions to enable the auctioneer and the Department of Revenue to determine the correct tax due.

CAUTION

If the Department of Revenue conducts an audit of an auctioneer's records, and the auctioneer does not have the required exemption or resale certificates or other required documents to prove that the sales are exempt, the sales will be presumed to be taxable and subject to the sales tax.

B. Records to Keep - Exempt Sales of Personal Farm Property or Personal Household Goods

Sales of personal farm property or personal household goods that are exempt from tax as discussed in Part V.B, on pages 3-8, do not need to be supported by exemption certificates. However, for each of such auctions, the following information must be kept by the auctioneer:

1. A copy of the contract between the owner of the property and the auctioneer. (See definition of "owner" in Part V.B.2, on page 6.)
2. Name and address of the owner of the property.
3. The date and location of the auction.
4. A description of each item sold, including the type of property (e.g., personal household goods, business inventory, personal farm property), and the selling price of each item. However, if several items were sold as a group, such as in one box, indicate the general character of the items (e.g., glassware, knickknacks, tools, miscellaneous kitchen items).

If all items sold at an auction were of one type (e.g., personal household goods, business inventory, personal farm property), it is

acceptable for the auctioneer to indicate that all items are of one particular type (e.g., all items sold were personal household goods), rather than listing the type of property next to each item sold.

C. Records to Keep - Resale and Other Exemption Certificates

An auctioneer may receive resale certificates and other exemption certificates (e.g., manufacturer's exemption certificates, farmer's exemption certificates) from buyers. If an auctioneer claims a deduction on its sales and use tax return for such sales, the auctioneer must keep as part of its records the completed certificates to prove that the sales are exempt.

D. Records to Keep - Sales to Exempt Organizations

1. Exempt sales to federal and Wisconsin governments, municipalities, and public schools must be supported by either one of the following:
 - A purchase order received from such an organization, or
 - An exemption certificate received in good faith from such an organization.
2. Exempt sales to organizations holding a Certificate of Exempt Status (e.g., churches) must be supported by either one of the following:
 - Listing the Certificate of Exempt Status number of such an organization on the auctioneer's copy of the invoice, or
 - An exemption certificate received in good faith from such an organization.

E. Records to Keep - Buyer Holds Direct Pay Permit

Exempt sales to buyers who hold a direct pay permit must be supported by either one of the following:

- A copy of the buyer's direct pay permit, or
- A statement that the buyer holds a direct pay permit, the permit number, and the date the permit was issued.

Contact any Department of Revenue office for more information on direct pay.

IX. IF YOU HAVE QUESTIONS

If you have questions about sales and use taxes, call or visit any Department of Revenue office or contact the department by any of the following:

Write ... Wisconsin Department of Revenue
P.O. Box 8902
Madison, WI 53708-8902

Fax ... (608) 267-1030

E-Mail ... sales10@dor.state.wi.us

Visit our website ... www.dor.state.wi.us

Location of Department of Revenue Offices:
Appleton, Baraboo, Beaver Dam, Eau Claire, Elkhorn, Fond du Lac, Grafton, Green Bay, Hayward, Hudson, Janesville, Kenosha, La Crosse, Lancaster, Madison, Manitowoc, Marinette, Marshfield, Milwaukee, Monroe, Oshkosh, Racine, Rhineland, Rice Lake, Shawano, Sheboygan, Superior, Tomah, Watertown, Waukesha, Waupaca, Wausau, West Bend, and Wisconsin Rapids.